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February 17, 2015

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 17, 2015
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 1268 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

HB1268 proposes to add a new section in Chapter 386, Hawaii Revised Statutes (HRS), to require the Director of the Department of Labor and Industrial Relations (DLIR) to determine if the positions of state employees receiving workers' compensation benefits should remain vacant for one year or longer. This proposal allows the Director to coordinate with the hiring authority of the injured state employee to temporarily fill the state employee's position while the state employee is receiving workers' compensation. This proposal also creates a workers' compensation temporary vacancy special fund which is funded by the injured state employee's wages and appropriations by the legislature to be used to pay the wages of the temporary employees.

The department opposes this measure, as chapter 386 may not be the proper statutory placement.

II. CURRENT LAW

Chapter 386, HRS, does not address issues concerning filling positions of employees who are unable to return to work for more than twelve months.

III. COMMENTS ON THE HOUSE BILL

The Department is aware that when someone is off of work for an extended period

of time, the person's work backlogs and hinders the state agency from providing timely services to the public.

The department, however, is opposed to this measure because we believe that neither chapter 386, HRS, nor the department is the proper vehicle to implement this measure. The department recommends that the human resources and administrative services programs of each separate jurisdiction of State government be delegated the authority to carry out the provisions of this measure.

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON
HOUSE BILL NO. 1268

February 17, 2015

RELATING TO WORKERS' COMPENSATION

House Bill No. 1268: requires the Director of the Department of Labor and Industrial Relations (DLIR) to determine if an injured State employee receiving workers' compensation can return to work within one year; provides for the filling and funding of temporary vacant positions to fill the State employee's position while the State employee is incapacitated; and establishes the workers' compensation temporary vacancy special fund into which shall be deposited State employee wages and appropriations by the Legislature.

The Department of Budget and Finance (B&F) defers to DLIR regarding the technical issues and merits of the bill. However, as a matter of general policy, B&F does not support the creation of any special fund which does not meet the requirements of Section 37-52.3, HRS. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to House Bill No. 1268, it is difficult to determine whether there is a clear nexus between the benefits sought and the source of funding, and whether the fund will be self-sustaining.

I encourage the Legislature to review the fiscal and operational plan for this fund to ensure that it does conform to the requirements of Section 37-52.3, HRS.



STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
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February 14, 2015

**TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR**

For Hearing on Tuesday, February 17, 2015
10:00 a.m., Conference Room 309

BY

JAMES K. NISHIMOTO
DIRECTOR

House Bill No. 1268
Relating to Workers' Compensation

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide comments on H.B. 1268.

The purposes of H.B. 1268 are to require the Director of Labor and Industrial Relations ("Director") to determine if the positions of state employees receiving workers' compensation benefits should remain vacant for one year or longer; provide for the filling and funding of the temporarily vacant positions; and establish a funding mechanism.

The Department of Human Resources Development ("DHRD") has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. In that regard, DHRD respectfully submits these comments on the bill.

First, we understand and appreciate the intent of this measure, which is to help the State to continue to perform its functions when employees are unable to return to work for extended periods due to a work-related injury or illness. The timetable for an employee to return to work following an injury or illness is inherently difficult to predict

due to myriad interrelated factors, including the nature and severity of the injury, the overall health of the employee, the treatment regimen of the attending physician, and the response of the employee to the treatment. Until the attending physician releases an employee to return to work, or the employer forces a determination of the issue through the use of an independent medical examination and hearing by the Director, the employee remains off work and we are obligated by law to pay the employee temporary disability benefits. During this time, the injured employee continues to occupy his or her position and it is not vacant. If this measure advances, it may require the Legislature to create and fund new positions that are dedicated solely for temporary employees to perform the work of employees on temporary disability.

Second, if the injured employee is permanently unable to return to their original position, they have the added benefit of participating in DHRD's Return to Work Priority Program ("RTWPP"). The RTWPP was promulgated pursuant to Administrative Directive 94-02, which expresses the State's policy that each department head shall give injured and disabled State employees priority consideration in returning to employment. Under the RTWPP, employees who are medically cleared are returned to either temporary light duty work or permanent alternate employment within the State if their work injury permanently precludes them from returning to their usual and customary employment. If a return to employment within the State is not successful via the RTWPP, the employee is terminated and can undergo private vocational rehabilitation to seek other employment. Throughout this RTWPP process—and until the employee is placed or terminated—the injured employee continues to occupy his or her position and it is not vacant. As above, this measure would likely require the Legislature to create and fund new positions that are dedicated solely for temporary employees.

Third, workers' compensation temporary disability benefits for employees who are unable to work due to their injury, or who are going through the RTWPP, are paid from the wages for their positions. These wages would not be available to be deposited into the temporary vacancy special fund. Also, many State employees' wages are paid from special funds, which may have restrictions on how they are expended. Therefore,

if this measure moves forward, the Legislature would have to appropriate new monies to the temporary vacancy special fund in order to pay the wages of any temporary employees.

Finally, if the Director of Labor is tasked with making return to work determinations, we recommend that these be performed by someone within the department who is vocationally certified.